and where grantee took possession of the property and paid consideration named in deed, the deed, if invalid for nondelivery, will be enforced as a contract; the expression of the terms of the contract in deed taking the contract out of the statute of frauds.

Appeal from Circuit Court, Botetourt County.

Suit by G. P. Chiles against J. W. Bowyer and others. From the decree rendered, plaintiff appeals. Affirmed.

O. B. Harvey, of Clifton Forge, and *Geo. A. Revercomb,* of Covington, for appellant.

Haden & Haden, of Fincastle, for appellees.

WINN BROS. & BAKER, Inc., *v.* LIPSCOMBE.

June 10, 1920.

[103 S. E. 623.]

1. Trial (§ 253 (7)*)—Instruction Directing Verdict on Inadequate Statement of Facts Erroneous.—Instructions, which in substance direct a verdict on a partial and inadequate statement of facts, are erroneous.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 627, 628.]

2. Trial (§ 296 (2)*)—Instructions Held Sufficient in View of Other Instructions.—In action for cost of apples purchased for defendant by plaintiff and for commissions earned, instruction to find for plaintiff if he had been authorized to purchase the apples for defendant held not objectionable as against contention that it authorized verdict for plaintiff without requiring that he exercised proper care to see that apples were shipped and packed in proper condition, in view of other instruction, with which such instruction must be read, submitting qustion whether plaintiff was in default in the discharge of his duties.

3. Principal and Agent (§ 89 (10)—Instruction as to Plaintiff's Authority to Buy Apples for Defendant Held Warranted.—In action for cost of apples purchased for defendant by plaintiff and for commissions earned in so doing, evidence held to warrant instruction submitting question of whether defendant authorized the purchase of the particular apples.

4. Trial (§ 329*)—Verdict Must Dispose of All Issues Affecting its Correctness.—A verdict, to be valid, must dispose of all the issues in the case which affect the correctness of the verdict; and, if it is uncertain whether the verdict responds to all of such issues it is invalid.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 612.]

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*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

5. Trial (§§ 329, 343*)—General Verdict for Plaintiff Sufficient Notwithstanding Special Plea of Set-Off.—In action for cost of apples purchased by plaintiff for defendant and for commissions earned in so doing, where defendant filed special plea of set off for damages because of delivery of apples inferior to those contracted for, a general verdict for plaintiff was sufficient, being necessarily a finding in his favor upon the issue on the special plea, as well as upon the general issue, under Code 1919, §§ 6145, 6150.

Error to Circuit Court of City of Norfolk.

Action by Rush Lipscombe against Winn Bros. & Baker, Incorporated. Judgment for plaintiff, and defendant brings error. Affirmed.

Thos. W. Shelton and *Alfred Anderson,* both of Norfolk, for plaintiff in error.

Hicks, Morris, Garnett & Tunstall, of Norfolk, for defendant in error.

PRINCE *v.* BARHAM, et al.

June 10, 1920.

[103 S. E. 626.]

1. Wills (§ 625*)—Provision Held an Executory Devise.—Provision of a will that, should testator's daughter H. die leaving no children, land loaned to her by a prior provision "I leave in trust * * * for the benefit of my daughter V. and children," is an executory devise.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc Dig. 850, et seq.]

2. Wills (§ 742*)—Interest in Executory Devise May Be Conveyed Before Happening of Contingency.—An executory devise stands on the same footing as a contingent remainder as concerns transmissibility of the subject thereof; and an interest in such subject may be conveyed, certainly by virtue of Code 1887, § 2418, prior to happening of the contingency on which the interest is appointed by the will to vest in right of possession, if the grantor then has a possibility of taking coupled with an interest, which he has if he then is an ascertained person to take under the devise; that is, if he is designated by name, or by class, all of which class are to take and one of which he is, subject, however, to reduction in quantity for any subsequent increase of the number of the class.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 859.]

3. Wills (§ 524 (2)*)—Children, to Whom an Executory Devise Was

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*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.